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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHER
DIRECTOR

November 15, 2016

Mr. Robert Kaplan, Acting Regional Administrator
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604-3507

Dear Mr. Kaplan:

SUBJECT: Michigan Commitment to Comply with the Start-up, Shutdown, and
Malfunction (SSM) State Implementation Plan (SIP) Call

Pursuant to Section 110 of the federal Clean Air Act; Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; and the SSM SIP Call (80 *Federal Register* 33840), the Michigan Department of Environmental Quality (MDEQ) is submitting the following commitment to comply with the SSM SIP Call to the United States Environmental Protection Agency (USEPA).

The MDEQ, through this submittal, is committing to make a full SIP submittal to comply with the SSM SIP Call once R 336.1916 is promulgated. The enclosed commitment includes the draft version of R 336.1916 currently in the rulemaking process.

We request that the USEPA accept this submittal as MDEQ's commitment to comply with the SSM SIP Call. Questions on this submittal may be directed to Ms. Mary Maupin, SIP Unit Supervisor, Air Quality Division, at 517-284-6755; maupinm@michigan.gov; or MDEQ, P.O. Box 30260, Lansing, Michigan 48909-7760; or you may contact me.

Sincerely,

C. Heidi Grether
Director
517-284-6700

Enclosure

cc/enc: Ms. Mary Portanova, USEPA, Region 5
Mr. Robert Wagner, Program Deputy Director, MDEQ
Ms. Lynn Fiedler, MDEQ
Ms. Mary Maupin, MDEQ
Ms. Erica Wolf, MDEQ



C. Heidi Grether
Director

COMMITMENT TO COMPLY WITH THE START-UP, SHUTDOWN, AND MALFUNCTION STATE IMPLEMENTATION PLAN CALL

for

**R 336.1916 Affirmative Defense for Excess
Emissions During Start-up or Shutdown**

November 14, 2016

Prepared by:

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ATTACHMENTS:

ATTACHMENT A	Strike-bold copy of draft R 336.1916 as submitted to the Office of Regulatory Reinvention.
ATTACHMENT B	Michigan's administrative rules process.

Commitment to Comply with SSM SIP Call

The State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), is committing to comply with the Start-up, Shutdown, and Malfunction (SSM) State Implementation Plan (SIP) Call by revising the Michigan SIP for R 336.1916. The MDEQ intends to revise R 336.1916 to comply with the SSM SIP Call requirements and then remove the current version of R 336.1916 from the SIP.

On June 12, 2015, the United States Environmental Protection Agency (USEPA) issued an SSM SIP Call (80 *Federal Register* 33840) that applies to R 336.1916. The MDEQ began the rulemaking process to correct the deficiency in R 336.1916 to comply with the SSM SIP Call in November 2015. Attachment A contains the rulemaking process for the State of Michigan. Currently, R 336.1916 is at the Joint Committee on Administrative Rules. When this legislative committee completes its review process, R 336.1916 will be transmitted to the MDEQ and the Office of Regulatory Reinvention for formal adoption and filing with the Office of the Great Seal, completing the promulgation process.

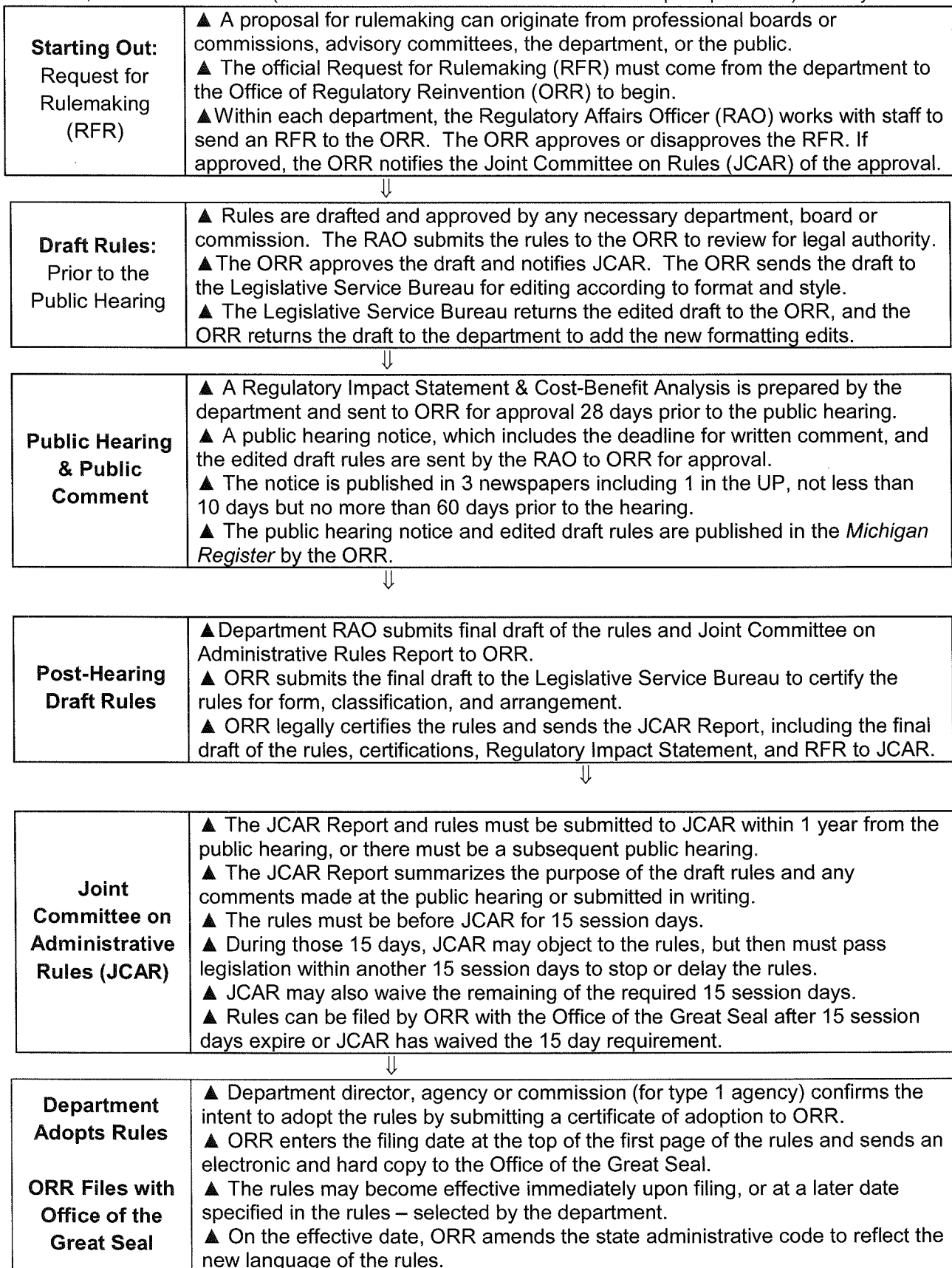
The draft of R 336.1916 (Attachment B) will comply with the SSM SIP Call by making an affirmative defense for start-up and shutdown events applicable only to state rules not contained in Michigan's SIP; specifically R 336.1224 to R 336.1228 and R 336.1901. These rules are enforceable only at the state level. R 336.1224 to R 336.1228 are Michigan's air toxics rules, and R 336.1901 is a state-only nuisance rule. Once R 336.1916 is promulgated by the State of Michigan, the MDEQ will submit a SIP revision to remove the current version of R 336.1916 from the SIP. This will ensure that any affirmative defenses based on start-up or shutdown events in Michigan will only be available to violations of rules that are not contained in the SIP.

Again, the MDEQ intends to fully comply with the SSM SIP Call once R 336.1916 is promulgated and a SIP revision can be submitted to the USEPA.

ATTACHMENT A

Administrative Rules Process in a Nutshell

The process for creating, amending, and rescinding administrative rules is governed by the Administrative Procedures Act, PA 306 of 1969, MCL 24.201 to 24.328. (Note this is an overview and does not include all required provisions.) February 2015



ATTACHMENT B

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

PART 9. EMISSION LIMITATIONS AND PROHIBITIONS—MISCELLANEOUS

R 336.1916 Affirmative defense for excess emissions during start-up or shutdown for violations of R 336.1224 to R 336.1228 and R 336.1901.

Rule 916. (1) The person operating a source with emissions in excess of an applicable emission limitation due to start-up or shutdown may claim an affirmative defense to an enforcement proceeding **for violations of R 336.1224 to R 336.1228 and R 336.1901**, excluding a judicial action seeking injunctive relief, if the person has complied with the reporting requirements of R 336.1912 and has demonstrated all of the following:

(a) The periods of excess emissions that occurred during start-up or shutdown were short and infrequent and could not have been prevented through careful planning and design.

(b) The excess emissions that occurred during start-up or shutdown were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(c) The excess emissions caused by a bypass (an intentional diversion of control equipment) were unavoidable to prevent loss of life, personal injury, or severe property damage.

(d) The facility was operated at all times in a manner consistent with good practice for minimizing emissions.

(e) The frequency and duration of operating in start-up or shutdown mode were minimized to the maximum extent practicable.

(f) All reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(g) All emission monitoring systems were kept in operation if at all possible.

(h) The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence as provided by R 336.1912.

(i) Excess emissions presenting an imminent threat to human health, safety, or the environment were reported to the department as soon as possible. Unless otherwise specified in the facility's permit, other excess emissions were reported as provided in R 336.1912. If requested by the department, a person shall submit a full written report that includes the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(j) Any information submitted to the department under this subrule shall be properly certified in accordance with the provisions of R 336.1912.

(2) This affirmative defense does not apply when a single emission unit, or multiple emission units at a stationary source, causes an exceedance of the national ambient air quality standards or any applicable prevention of significant deterioration increment.

(3) If the proximate cause of the excess emissions which occurred during routine start-up or shutdown periods was due to a malfunction, then, absent any intervening acts or superseding causes, the instances shall be treated as malfunctions in accordance with R 336.1915.

(4) Nothing in this rule shall be construed to limit the authority of the department to seek injunctive relief or to enforce the provisions of the act and the regulations promulgated under the act.